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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/595,977

06/14/2007

Mark Ashby

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EXAMINER

MASHACK, MARK F

ART UNIT

PAPER NUMBER

3773

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/595,977	<b>Applicant(s)</b> ASHBY ET AL.	
	<b>Examiner</b> MARK MASHACK	<b>Art Unit</b> 3773	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 August 2011.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,27,29-33,40-42,44-49,61 and 62 is/are pending in the application.
- 4a) Of the above claim(s) 29-33 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,27,61 and 62 is/are allowed.
- 6) ☒ Claim(s) 40-42 and 44-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

This office action is in response to a communication dated 8/12/2011. Claims 1, 27, 29-33, 40-42, 44-49, and 61-62 are pending. Claims 29-33 have been withdrawn.

### *Allowable Subject Matter*

1. Claims 1, 27, 61-62 allowed.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 40-42, 44, 46-49** are rejected under 35 U.S.C. 102(e) as being anticipated by **Houser et al. ("Houser" US 6,726,696)**.

**Regarding Claim 40, Houser** discloses of an apparatus to promote hemostasis at a blood vessel, the apparatus **105** (Fig 4) comprising: a flexible disk **140** intended to cover a puncture site and seal the puncture site (Col 6, lines 42-53); a hemostatic body **145** (since it comprises collagen, Col 6, Lines 14-15) to seal the blood vessel puncture site; a neck **150** having a first side attached near a center of the flexible disk and having a second side opposite the first side attached to the hemostatic body.

**Regarding Claim 41, Houser** discloses of the neck having a smaller diameter than a flexible disk diameter and a hemostatic body diameter (Fig 4). **Regarding**

**Claims 42 and 44**, the release mechanism comprises resilient extension member **155** since it is detachably coupled to element **310** (Fig 24) and the resilient extension member has an aperture. **Regarding Claim 46**, the resilient extension member would be made of a hemostatic material since the whole apparatus **105** comprises collagen (Col 6, Lines 14-15). **Regarding Claim 48**, the adhesive lining the lumen of the resilient extension member (Col 6, lines 42-53) would be considered a hemostatic material since it would aid in preventing blood leakage. **Regarding Claim 47 and 49**, the coating can be considered the capsule and comprises therapeutic agents which are dissolvable (Col 19, Lines 23-39).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. **Claim 45** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Houser** in view of **Briganti et al. ("Briganti" US 2005/0033326)**.

**Houser** discloses all of the claimed limitations except for the suture looped through an aperture of the resilient extension mechanism.

However, **Briganti** teaches of a similar vascular plug with a release mechanism comprising a suture looped through a resilient extension member (Fig 11A).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the resilient extension member of **Houser** with a suture loop through an aperture as taught by **Briganti**. The release mechanism of **Briganti** would provide a reliable means of positioning and releasing the plug of **Houser** (**Briganti** Paragraph 141).

### ***Response to Arguments***

7. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Mashack whose telephone number is (571)270-3861. The examiner can normally be reached on Monday-Friday 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, ***please contact the examiner's supervisor, Corrine McDermott, at (571) 272-4754.*** The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

***If there are any inquiries that are not being addressed by first contacting the Examiner or the Supervisor, you may send an email inquiry to***

***TC3700\_Workgroup\_D\_Inquiries@uspto.gov.***

Art Unit: 3773

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Mashack/  
Examiner, Art Unit 3773

/CORRINE M MCDERMOTT/  
Supervisory Patent Examiner, Art Unit 3773